

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHAEL HOFFMAN,)
Plaintiff,) Civil Action No. 05 - 294
v.) Judge Joy Flowers Conti /
KEMPLE; MILTON KERSHNER,) Magistrate Judge Lisa Pupo Lenihan
Correctional Officer; and CARL BETCHY,)
Former Correctional Officer at SCI-Pittsburgh,)
Defendants.)

ORDER

Pending before the Court are three motions from the Plaintiff, all relating to the inability of this case to be properly served. This order will rule on the pending motions and establish a deadline for at least two of the Defendants to file waivers of service.

The first motion is Plaintiff's Motion for Extension of Time (Doc. No. 30), in which an extension of the 120 day time limit for service of the complaint is sought. Plaintiff has done everything he can to make sure this case proceeds in a timely manner and none of the delays in effectuating proper service can be attributed to him. This motion, therefore, will be granted.

The second and third motions will be addressed at the same time. Plaintiff filed a "Motion Seeking an Order from the Court, Directing the U.S. Marshal's Service to Effect Personal Service upon Defendants" (Doc. No. 31) and a "Motion Seeking an Order from the Court that Defendants Pay Costs of Personal Service" (Doc. No. 34). The Court has attempted to serve this case on more than one occasion, only to have waivers of service returned un-executed. Pursuant to a conversation between Court staff and the Department of Corrections, it was learned that two of the defendants, Kemple and Milton Kershner, are still employed by the department. The third, Carl Betchy, retired

from the department and his current address is unknown. When questioned why service was not accepted on behalf of two of its employees, the Department of Corrections answered with the Unsworn Declaration of Suzanne N. Hueston.¹ The declaration states that the Department of Corrections will not be representing the defendants in this action. It goes on to further state there was doubt whether the notices sent to Mr. Kemple and Mr. Kershiner indicating they would need to seek representation included the waivers and copies of the complaint. While Ms. Hueston makes a credible argument they were, the Court will err on the side of caution and not make an assumption the waivers and the complaint were included. In any event, a waiver and copy of the complaint were re-sent via certified mail with a return receipt requested to Defendant Kemple and Defendant Kershiner. Defendant Kemple accepted the mailing on February 16, 2007 and Defendant Kershiner accepted the mailing on February 16, 2007. That establishes a response deadline of April 16, 2007. Because the mailings were accepted, personal service is not currently an issue before the Court. Should no responsive pleading be filed by April 16, 2007 by either of the defendants served, the Court will re-visit the issue of personal service and who should incur the cost of effectuating it. Plaintiff's motions regarding personal service will be denied without prejudice at this time.

Therefore,

[Signature]
IT IS ORDERED this 2 day of March, 2007, that Plaintiff's Motion for Extension of Time (Doc. No. 30) is **GRANTED**.

1. A redacted copy of the declaration was filed by the Court on 2/21/2007 (Doc. No. 36). A copy of the redacted declaration is attached to this order as Exhibit A.

IT IS FURTHER ORDERED that Plaintiff's "Motion Seeking an Order from the Court, Directing the U.S. Marshal's Service to Effect Personal Service upon Defendants" (Doc. No. 31) is **DENIED** without prejudice.

IT IS FURTHER ORDERED that Plaintiff's "Motion Seeking an Order from the Court that Defendants Pay Costs of Personal Service" (Doc. No. 34) is **DENIED** without prejudice.

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Local Rule 72.1.3 B. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.



Lisa Pupo Lenihan
U.S. Magistrate Judge

cc: Michael Hoffman
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